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IN THE SUPREME COURT OF THE UNITED STATES

October Term, A.D. 1958

STATES OF WISCONSIN, MINNESOTA, OHIO and THE COMMONWEALTH OF PENNSYLVANIA,

Complainants,

v.

STATE OF ILLINOIS and the SANITARY DISTRICT OF CHICAGO,

Defendants.

No. 2 Original

STATE OF MICHIGAN,

Complainant,

v.

STATE OF ILLINOIS and the SANITARY DISTRICT OF CHICAGO,

Defendants.

No. 3 Original

STATE OF NEW YORK,

Complainant,

v.

STATE OF ILLINOIS and the SANITARY DISTRICT OF CHICAGO,

Defendants.

No. 4 Original

Exceptions, Objections and Comments of the States of Wisconsin, Minnesota, Ohio, Commonwealth of Pennsylvania, Michigan and New York to the Memorandum Filed on April 14, 1959 by Honorable J. Lee Rankin, Solicitor General, for the United States as Amicus Curiae, on the Amended Application of the Above Complainants.

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SPEAKER-HINES AND THOMAS, INC., LANSING, MICH.—1959

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To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The complainant States of Wisconsin, Minnesota, Ohio, Commonwealth of Pennsylvania, Michigan and New York respectfully object and except to the Memorandum filed on April 14, 1959 by Honorable J. Lee Rankin, Solicitor General, for the United States as Amicus Curiae, on the Amended Application of the above complainants herein, in the following particulars and manner:

Exception Number 1: Complainants except to the failure of the Memorandum at page 5, second paragraph, to in-

clude a statement that the States of Missouri, Kentucky, Tennessee, Louisiana, Arkansas and Mississippi have no standing as intervening parties or otherwise in this litigation. Their lack of any justiciable interest was adjudicated and they were dismissed from the case by the decision of this Court in *Wisconsin et al v. Illinois et al.*, in 278 U.S. 367, and they were and are not parties to the decree of April 21, 1930 (281 U.S. 696); and said Mississippi River States were and are not parties to the decree of May 22, 1933 (289 U.S. 710), which decree amended the April 21, 1930 decree.

Exception Number 2: Complainants except to the conclusion, page 6, second paragraph, that "The Court found that the temporary and conditional permit to divert 8,500 c.f.s. was justified as being necessary to keep the Chicago River, as part of the port of Chicago, free from deposits of sewage until improved means of sewage disposal could be provided."

Exception Number 3: Complainants except to the failure of the Memorandum, page 7, 1st paragraph, to state that under the terms of the decree of April 21, 1930, the District was required to file semi-annual reports with the Court until such time as the Court, after application, enters an order relieving the District of the obligation to file such semi-annual reports but that notwithstanding such obligation of the District, no such reports have been filed with the Court since January 2, 1939.

Exception Number 4: Complainants except to the conclusion, page 10, last paragraph and footnote 3, that "The direct diversion was reduced in accordance with the Court's schedule, and since 1938 it has not been exceeded, on an annual average, 1500 c.f.s. except for a few temporary increases authorized by the Court or the Corps of Engineers

to meet emergency situations." The slightly excessive diversion in 1942 (1,528 c.f.s.) and 1944 (1,531 c.f.s.) were not authorized by the Chief of Engineers or the Secretary of War, as we are advised by the Division Office, Great Lakes Division, Corps of Engineers.

Exception Number 5: Complainants except to the failure of the Memorandum to state, page 11, at the end of the 1st paragraph, that the increase in domestic pumpage at Chicago in the future will be the normal rate of increase after a 20-year period of decrease attributable to leakage elimination.

Exception Number 6: Complainants except to the conclusion, pages 13-14, that complainants have not shown grounds for modifying the decree so as to require Chicago's sewage effluent to be returned to Lake Michigan.

Exception Number 7: Complainants except to the conclusions set forth at page 16 with reference to the injuries to navigation due to diversion at Chicago of the domestic pumpage.

Exception Number 8: Complainants except to the conclusions, pages 17-18, with reference to the adequacy of the collection, handling and operation of the District's sewage treatment plants.

Exception Number 9: Complainants except to the conclusions reached, page 18, with respect to the anticipated increases in the domestic pumpage at Chicago.

Exception Number 10: Complainants except to the argument appearing on pages 19-23 with respect to the power losses sustained by the New York Power Authority by reason of the diversion of the domestic pumpage at Chicago.

Exception Number 11: Complainants except to the conclusions reached to the effect that complainants have not shown grounds for the appointment of a Special Master to inquire into their allegations, pages 29-30.

CONCLUSION

Many of the contentions made by the Solicitor General which are at variance with those made by the complainants are answered generally in the complainants' reply brief to the brief filed by the defendants. Complainants agree with the suggestion made that the Court appoint a Special Master to re-evaluate the needs of all parties, with power to conduct his own investigation and to hold hearings, and the like, and to make recommendations as to the future pattern of development of the situation, looking toward entry if necessary of a supplemental decree.

Respectfully submitted,

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